

**TALLAHASSEE-LEON COUNTY
BLUEPRINT 2000 INTERGOVERNMENTAL AGENCY**

**Meeting Minutes
January 31, 2005, 2:00 PM
City Commission Chambers**

MEMBERS PRESENT

County

Commissioner Ed DePuy
Commissioner Tony Grippa
Commissioner Bill Proctor
Commissioner Bob Rackleff
Commissioner Jane Sauls
Commissioner Cliff Thaell, Vice-Chair
Commissioner Dan Winchester

City

Commissioner Andrew Gillum
Commissioner Allan Katz
Commissioner Debbie Lightsey
Commissioner John Marks
Commissioner Mark Mustian, Chair

CITY/ COUNTY STAFF

Mazie Crumbie, City Accounting
David Bright, Blueprint 2000
Jim Davis, Director, Blueprint 2000
Jim English, City Attorney
Shelonda Gay, Blueprint 2000
Hilda Gilchrist, City Engineering
Fred Goodrow, TLCPD
Theresa Heiker, County Public Works
Jack Kostrzewa, TLCPD
Phil Maher, Blueprint 2000
Gabe Menendez, City Public Works

Tammy Peters, Blueprint 2000
Angela Richardson, Blueprint 2000
Dan Rigo, County Attorney's Office
Debra Schiro, City Attorney's Office
Rita Stevens, City Accounting
Wayne Tedder, TLCPD
Jennifer Toth, Blueprint 2000
Alan Williams, Mayor's Office
Bill Woolery, City Engineering
Michael Wright, Asst. City Manager
Dianna Williams, City Accounting

OTHERS PRESENT

Dale Allen, Capital Cascade Council/TPL
Kathy Archibald, EECC
Angel Baratta, PBS&J
Cathie Cash, PBS&J
Norene Chase, Big Bend Sierra Club
Karel J. Crawford, FAMU-TV20
Debbie Dantin, Genesis Group*
Jack Diestelhorst, Capital Cascade Council
Paco de la Fuente
R. Patrick Elliot, Seminole Manor Resident
Eric Gooch, Genesis Group
Linda Jamison, Sierra Club
Carol Kio-Green, Citizen
Bill Little, Jacobs Civil Eng.*

Mark Llewellyn, Genesis Group*
Henree Martin, EECC
Sean McGlynn
Hank Morgan, Holland & Knight LLP
Michael Munson, Genesis Group*
Maribel Nicholson-Choice, Greenberg Traurig*
Michael Nesius, FSU Environmental Science
Jerry Oshesky, The LPA Group*
Bonnie Pfuntner, The LPA Group*
Joe Schreiber
David Ramsay, Suntrust Bank
Ed Ringe, The LPA Group*
Le Whitney
Ray Youmans, THC*

* Indicates Blueprint 2000 Consultant

CALL TO ORDER

Chairman Mark Mustian called the meeting to order at 2:10 p.m. He stated that there would potentially be a need for a special meeting of the board if items were not completed during the meeting. He asked the members of the board to be mindful of the amount of items on the agenda and that the public wished to be heard during the meeting on various issues.

11. Capital Cascade Trail: Project Update

RECOMMENDED ACTION:

No action requested, for IA information and discussion only.

Commissioner Mustian requested to hear speakers regarding Capital Cascades Trail prior to the IA's discussion. He further stated that this was an information item, however that staff would need guidance to move further in developing and evaluating the concepts.

Kathy Archibald, EECC member, stated that when the EECC was developing the Blueprint 2000 project list they met regarding Franklin Boulevard and took approximately three to four months to discuss the various options. She stated that based on cost and the recommendations of City and County staff, they settled on box culverts. She stated that the options discussed included two-lanes, an open stream, boxed culverts and even the elimination of the roadway. She further stated that box culverts were the most feasible solution. Ms. Archibald stated the two major components of the Blueprint plan are Capital Cascade Trail from beginning to end and all of the Capital Circle improvements. She stated that the EECC recognized that the funds needed to be leveraged in order to complete these projects. She asked that the Board complete these projects as originally intended.

Henree Martin, EECC member, stated that they had met and had approved the staff's recommended concepts as presented. She stated that City and County staff had recommended this concept for segment 1 and that the EECC knew there was not enough money from the beginning of the project.

Valerie Jean Connor, representative of the Meyers Park Neighborhood Association, stated that the Association had met and discussed the recommended concepts. Ms. Connor read from a prepared statement (attachment 1) that is included as a part of these minutes.

Joe Schriber, resident of Beverly Court, stated that, in his opinion, not funding segment 4 was a critical mistake and that as a part of the southern strategy and improving infrastructure as a whole this was an important part of the plan. He stated that it is important to start with segment 4, to insure that the improvements have been made upstream are not destroyed. He further stated that he was concerned that there would be a pond over a superfund site that could cause water quality problems in the future. He mentioned that there were some concerned citizens in his neighborhood who are in favor of keeping the stream. He stated that he did not feel that all of the alternatives had been considered. He thanked Mr. Davis for listening to the concerns and suggestions of the community and for all of the work that was done by the consultants and staff. He stated that this project was not only about transportation or only stormwater. He stated that the recommended concept for this area was not consistent with what was presented to the voters as the signature project for this program. He stated that he did not feel that the project should be

rushed through, funded and implemented with mistakes that citizens would have to pay more money to correct later. Mr. Schriber stated that there should be a segment "0" that would be a restoration of Lake Leon above Tennessee Street. He stated that he understood that there was resistance by the Leon County School Board, but that this was a safety issue for the students. He mentioned that there were pictures in the Tallahassee Democrat of students being rescued from floodwaters in the parking lot of Leon High School.

Le Whitney, resident of Call Street, stated that she had fought several re-zoning issues in the twenty years that she has lived in this area. She stated that she felt there were additional alternatives for segment one. She stated that this area was a natural wetland surrounding the original Lake Leon called St. Augustine Branch, a historic stream, that is spring feed. She stated that three additional springs had been discovered that feed into this natural waterway just up the hill on Call St. She stated that she voted for a beautiful natural waterway, not a paved over freeway. She stated at she supported a two-lane road with the stream, bicycle lanes and sidewalks.

Sean McGlynn, resident of Beverly Court, distributed copies of the "Will committee's dream be ditched?" article from the February 7, 2000 Tallahassee Democrat (attachment 2), a letter from the Leon County Science Advisory Committee dated January 19, 2005 (attachment 3) and "Florida's Lost Waterfall: Cascades Park", an essay by Julie Hauserman (attachment 4). He stated that the EECC did a lot of work on this project. He stated that Capital Cascade is a natural spring feed water body that is classified as a class 3 recreational water body with aquatic plants and small fish. He further stated that contrary to reports, the stream is not dangerous and that the deaths that have happened were cause because students were sent by the police to check cars and they were pulled into a broken grate over a culvert. He stated that currently Franklin Boulevard is not designed very efficiently, however it carries more traffic volume than other two-way streets. Mr. McGlynn stated that according to hydrological models the creek could carry the full load of the stormwater that it currently receives if the culverts under the bridges were properly sized. He further stated that only the dips in the road flood. He stated that the cost of the culverts has increased from \$3 million to \$9 million since the EECC did their report. He stated that segment one will cost \$25 million for 0.6 miles of road. Mr. McGlynn stated that the road could be changed to two-lanes with turn lanes in the middle then the creek could be moved to one side with the bike trails on the other side of the creek. He urged the Board to prioritize segment four, making it the first segment to be complete.

Linda Jamison, Big Bend Sierra Club, stated that the Sierra Club recognizes the amount of work that has gone into the planning of Blueprint 2000. She stated that they maintained their position regarding the Capital Cascade Trail with the following main points: Franklin Boulevard was built on the natural flood plain of St. Augustine Branch and that the placement of roadways and residential areas in floodplains has caused countless tragedies and the lose of human life. She read a portion of their policy on floodplains, which is published nationally.

"In flood protection, emphasis should be placed not on structural controls, but on floodplain management, including flood proofing ... and zoning for compatible uses to control future development. To maximize environmental benefits, floodplains should be utilized for wetlands, agriculture, parks, greenbelts, groundwater recharge, buffer zones for protection of in stream uses, and other uses compatible with the flood hazard. Structural devices should not be used

where they would encourage development in floodplains.” (Sierra Club Conservation policy on water can be found at <http://www.sierraclub.org/policy/conservation/water.asp>)

Ms. Jamison further stated that the Sierra Club was in favor of reducing the size of the road to two-lanes with the maintenance of the stream. She stated that at least 50% of the water in the St. Augustine Branch comes from properties north of Tennessee Street. She stated that the springs should be protected through the Springs Rule that was adopted in the fall of 2003 by Governor Jeb Bush. Ms. Jamison further stated she understood that the 341 acres north of Tennessee Street is outside of Blueprint's boundaries, but it is imperative to address it in order to move forward on segment 1. She further stated that the Science Advisory Group has advised that Lake Leon should be brought back to some level of operation to mitigate the excess water. She further stated that impervious surfaces needed to be reduced to reduce the amount of runoff load into St. Augustine Branch. Ms. Jamison stated that they hoped that the time would be dedicated for a scientific search for an integrated solution that utilized nature, anything less would only be a band-aid. She stated that Ben Fusaro, math professor, had developed a collection system for chemical laden first flush road runoff near Leon High that sends contaminated runoff to a treatment system before it can be diluted and harder to treat in a larger volume of water. She further stated that this was a karstic area that needed to be handled with extreme caution because you could break through the karst into the aquifer. She further stated that the coal gasification plant area in segment 2 is also a concern for the same reason. She urged the Board to begin with segment 4.

John Citron, resident of Longfellow Road and representative of the Fans of Centennial Field, thanked Mr. Davis and his staff. He stated that he advocated that the “placeholder” for Centennial field should be made as flat as possible to facilitate a multi-use facility, not just a ball field.

Mr. Davis stated that Blueprint was following what the EECC had envisioned in the Project Definitions Report. He provided the Board with a copy of a rendering of the cross-section for Franklin Boulevard (attachment 5) which specifically shows the box culverts. He also provided the Board with some Franklin Boulevard traffic volume information (attachment 6) and pointed out the projected capacity shortfalls in 2020 if the roadway were to become two-lanes. He stated that for Segment 1, East Tennessee to Lafayette Street, the recommended concept was a compromise, with a 10' inside lane and a 13' outside lane. He stated that in order to have a painted designated bike lane this lane needed to be 14'. He further stated that in the recommended concept the plan is to provide a multi-use trail that begins at Leon High and continues to the St. Marks Trail, which was not a part of the EECC alternative. He stated that staff started where the EECC left off. Mr. Davis stated that the recommended concept shows the closing of median openings at Call Street and College Avenue. He further stated that because of the turn lanes on Franklin Blvd. that an open stream would not be feasible. He stated that the Citizen's Advisory Committee did not provide a recommendation for segment 1 because they felt that it needed to be looked at again.

Mr. Davis stated that for Segment 2, Lafayette Street to South Monroe Street, which includes Cascade Park, there was consensus and that the citizens have asked for a series of plazas and open spaces. He provided the Board with a brief description of the information that was

provided to them. He stated that these were floodable parks and that the major concern was the velocity of the water and that the plan is to deal with this during the design phase.

Mr. Davis described the trail network in Segment 3, South Monroe to Gamble Street. He further described the issues with water quality and that the recommended concept showed areas of open water that would improve water quality, however it would limit the stormwater storage capacity. He mentioned that the apartments and electric substation that are currently on FAMU Way would not be purchased or moved because it would be cost prohibitive. He further stated that the cost to move the electric substation would be approximately \$8 million not including right-of-way cost of the new location. He stated that in this area the water would be run underground, through a culvert, because of the limited right of way in the area. He stated that the trail network would be linked and nothing has been designed to preclude a connection with Gaines Street to the north at any location.

Mr. Davis stated that for Segment 4, Gamble Street to the confluence with Munson Slough, was budgeted for right-of-way only and that there were no construction funds set aside for Segment 4. He stated that this is mainly a water quality segment. He mentioned that the recommended concept showed a large pond on a parcel of land that is currently owned by the county.

He stated that the sequencing of this project had been planned for budget purposes to go from Segment 1, 2, 3 then 4. He stated that as for all stormwater projects the plan is usually to start at the downstream side and work upstream, however because this project has special features, staff recommended starting with segment 2 to coincide with the cleanup of Cascade Park. He stated that it would be up to the Board to decide which segments to fund, however the improvements needed to be made downstream to deal with the additional water that would be conveyed from the upstream projects.

Commissioner Mustian stated that the Board would handle questions one segment at a time to provide answers for staff direction.

Segment 1, East Tennessee to Lafayette Street

Commissioner Mustian stated that the EECC had not designed this project to be the complete solution to solve all of the downtown stormwater issues. He added that the EECC recommended Blueprint keep the four-lane option for Franklin Boulevard based on the transportation capacity constraints.

Commissioner Katz asked if one of the alternatives studied was a two-lane option with reversible lanes for peak hours. He mentioned that reducing the size of the road to two lanes would eliminate the right-of way space problems for this road. Mr. Llewellyn stated that this segment only has 80' of right of way and with one lane in each direction, left turn lanes, sidewalks and bike trails, the opportunity for a riverwalk would still be very limited in this segment. He stated that only about 30' would be available for the river walk area. Commissioner Mustian directed Blueprint staff to review this option. Ms. Debbie Dantin stated that the reversible lane alternative had been studied and that they did not work well for this area because of the directional split issue that needs to be maintained.

Commissioner Rackleff stated that he would be open to other alternatives because he has seen cities such as Chattanooga change a six-lane highway into a two-lane road and he has seen a presentation that shows traffic models that show that two-lane roads can move traffic effectively.

Commissioner Lightsey stated with new people coming into the discussion of ongoing projects they assume that alternatives have not been looked at. She stated that she had been working with the EECC members since the beginning of the project and she knows that the options mentioned had been looked at previously. She stated that they had been shown not to be feasible and that going back to study these alternatives once again would slow the progress of the project even further. She admonished the Board to "stick to what they have committed to." She further stated that changing the roadway into a two lane will change the transportation capacity of other roadways and that the City and County will have to deal with this issue as they previously did when Florida State University closed Woodward Avenue. She stated that dealing with traffic capacity changes were not in the City's current budget. She stated that she felt that the traffic analysis was probably under stated and that she did not believe that the Board would end up with a different option than the four-lane option. She stated that she would like to give staff direction that day to move forward.

Commissioner Winchester indicated he was prepared to move forward with segment one and not to continue the "paralyses by analysis". He further stated that he did not want staff to stop looking at other options just to get things done and because it was always done that way.

Commissioner Thaeli stated he was pleased to review alternatives to a four-lane Franklin Boulevard and he mentioned all of the comments that had been provided by the other Commissioners. He further stated that the Citizen's Advisory Committee and the Science Advisory Committee both recommended that a different approach should be taken in segment one. He stated that he wanted staff to look at the issues that Commissioner Rackleff brought up.

Commissioner Thaeli moved to have staff reevaluate segment one with a two-lane roadway with reversible lanes. The motion was seconded.

Commissioner Proctor stated that the Council recommended concept C for Segment 4, which provided the greatest level of flood control and water quality treatment. He further stated that segment 1 was not clear on the level of water quality treatment. He stated that there would be a greater quantity of water generated by the changes for the downstream properties. He stated that he wanted staff to deal with the water quality and quantity treatment to be addressed before it is brought back before the Board.

Mayor Marks followed up by stating that he personally liked the idea of a "Riverwalk," however, he did not wish to delay the progress. He stated that the EECC and staff had studied this and come up with the best options, therefore he was ready to move forward with the staff's recommendations. He further stated that the Board would not be able to please everyone.

Commissioner Thaeli amended his motion to include a time specific (three months) to complete the study of the alternative.

Commissioner Grippa asked if Franklin Boulevard was only two-lanes, with less impervious surface (by having a "riverwalk" or greenway on one side and the street on the other) if that

would decrease the need for stormwater storage? Mr. Davis responded that he believed that it would but he could not answer the questions, without the data, at the current meeting. Commissioner Grippa further asked what the EECC recommended. Mr. Davis stated that they concurred with staff recommendation on all 4 segments. Commissioner Grippa asked what the Technical Coordinating Committee (TCC) recommended. Mr. Davis stated that the TCC had technical concerns and advised that they did not have enough time or data to review the results of the study to provide adequate recommendations to the Board at this time. They recommended that the preferred concepts not be brought to the Board for a vote until they were reviewed further by the TCC. Mr. Davis explained the concerns raised by City and County staff and the concern of the velocity and the volume of the water. He stated that there was a question of erosion in the holding ponds due to the velocity, and the desire for stormwater retention before the water gets to Franklin Blvd either at Leon High, Lafayette Park or at the old Howard Johnson's site. Commissioner Grippa stated that he would like to hear from the technical engineers. He further stated that this would be the best place for meandering trails and bike paths and have them connected to the other trails. He stated that he too would like to see how the two-lanes with reversible lanes would work in this segment but he believed that the EECC probably had looked at this alternative.

Commissioner Mustian stated that the segment did need some changes but not a full scale redo. He stated that he had not changed his position of this being a four-lane roadway and that two lanes would create more of a bottleneck. He stated that Blueprint did not have the funding to restore Lake Leon at Leon High School. He further stated that it should be a part of the motion that the City, County and the School Board should work together on this issue.

Commissioner Thael amended his motion to include a formal request that City, County and the School Board should work together to provide mitigation for the stormwater problems caused by the loss of Lake Leon and the impervious surfaces north of Tennessee Street.

Commissioner Sauls stated that she would support the motion as long as there was a time certain. She asked if the consultants had looked at the two-lane reversible issue. Mr. Davis stated that the consultants had studied a four-lane reversible road. Ms. Dantin stated that she had studied a three-lane reversible alternative and the findings were that there was morning peak heavy flow south-bound and evening peak heavy flow north-bound, which are ideal conditions for reversible lanes, however during other periods traffic flows are not directional. She further stated that this would cause 100-300 cars per hour diverting to alternate routes rather than 500-600 diverting to alternate routes. She further stated that the initial cost for installing the signage would be \$500,000 to \$1,000,000 and \$20,000 to \$25,000 per year for maintenance. Mr. David Bright also pointed out that with the three-lane reversible alternative would eliminate the left turn capabilities. He further stated that staff looked at a four-lane alternative with one of the lanes being a reversible turn lane, but based on the traffic flow requirements now and in the future in addition to the overhead signage required that this would not be the green option that the citizens wanted.

Commissioner Katz stated that he would still like staff to look at this option and bring back recommendations on this alternative.

Commissioner Lightsey asked if three months was enough time to conduct the analysis that is required. Mr. Davis stated that three months was enough time to conduct this study and bring back the information to the Board. Commissioner Lightsey stated that the request to restore Lake Leon has been made previously, and they have turned it down numerous times before.

Commissioner Winchester asked if it was possible that the other segments will continue to be planned even if this segment is still under study.

Commissioner Thael moved to have staff reevaluate segment one with a two-lane roadway with reversible lanes to include a formal request that City, County and the School Board should work together to provide mitigation for the stormwater problems caused by the loss of Lake Leon and the impervious surfaces north of Tennessee Street. The motion was seconded. The motion failed 5-7 (weighted: 27-43) with Mayor Marks, Commissioners Gillum, Lightsey, Mustian, DePuy, Grippa and Winchester casting the dissenting votes.

Mayor Marks moved to accept staff's recommendation for four lanes on Franklin Boulevard. The motion was seconded.

Commissioner Proctor stated that the Board would be voting without the input of the technical staff regarding the downstream flooding and water quality. He stated that it would be irresponsible to move forward without this input. Mayor Marks amended his motion to request that staff look at stormwater detention issues north of Mahan Drive and the Technical Coordinating Committee's concerns.

Commissioner Sauls asked for clarification of the motion.

Mayor Marks stated that his motion was to accept staff's recommendation for four lanes on Franklin Boulevard and to request that staff look at the up-stream issues and their impacts on the project and to allow the TCC to look at the other technical issues. The motion was seconded. The motion carried 10-2 with Commissioners Proctor and Rackleff casting the dissenting votes.

Segment 2, Lafayette Street to South Monroe Street:

Commissioner Rackleff stated he would like to leave open the option of building Centennial Field because it played an important role in building the community and it is a historic site. He further stated that leaving the site open would allow for more engineering analysis that will show that the field could be built. He provided the Board with a technical letter from Mr. Charley Redding dated January 19, 2005 (attachment 7) that showed that with adjustments upstream to hold stormwater that there would be enough space to build a Babe Ruth/High School sized ball field. He further stated that this would be an urban park that would have activity during both daytime and nighttime hours. He stated that organized activities make a park a success.

Commissioner Grippa agreed with the baseball field concept that would attract people as a destination, but not a minor league baseball stadium. He stated that he felt that this should be an open green space. He also asked about the ramifications of having a retention pond over a cleaned up brownfield area. Mr. Davis stated that the pond would be lined to prevent contamination. **Commissioner Grippa moved to make the Cascade Park brownfield remain**

a historical site, designed as a level, green field and that staff determine whether the site is appropriate for a retention pond, and that staff investigate the demand for an amphitheater or other such amenity. The motion was seconded.

Commissioner Lightsey stated that City has been involved with the clean up of this property and that she was comfortable that once the area was cleaned up that a retention pond would be OK in this area. She stated that she could not support the motion as stated and that she would feel comfortable moving forward with the staff recommendation, understanding that during the design phase the exact determination of what would go in the area would be decided during the first phase analysis.

Commissioner DePuy stated that the decision that was made regarding Cascade segment one leaves him to believe that there was not enough room in the area for a ball field and a retention pond. He stated that the neighbors do not want a ball field. Commissioner DePuy asked if the area designated as an amphitheater in Cascade Park could be designed as a pervious water feature to help with runoff and stormwater. Mr. Davis stated that it could be and that the concept shown in the concept reflects what the public asked for during the public workshops and meetings. Commissioner Depuy asked if there were a ball field in the area would it contaminate the retention pond with runoff from the clay, lime and chalk. Mr. Davis stated that this would be a possibility. He further stated that in the recommended concept with the amphitheatre is designed to flood and it is terraced down, however to do a ball field, the site would have to be elevated and leveled. He further stated that the ball field would conflict with the retention ponds capacity to store water.

Mayor Marks stated that even though he would like to see a minor league team in Tallahassee, segment two was not the appropriate place for a ball field. He further stated that he had been working on this project and had committed to restoring the area to the condition that it was in prior to the ball field placement and the coal gasification plant being in this area. He stated that he was opposed to a baseball field being at this location and that he envisioned a park that resembled Central Park in New York, therefore he agreed with the staff recommendation.

Commissioner Gillum stated that there was a need to achieve greater utility in order to be an effective area, however he was opposed to not having a retention pond because of the actions that were taken on segment 1 of the project.

Commissioner Proctor stated that he would support the amphitheatres in the area and that it would maximize utilization of the park. He further stated that he would suggest the name of R.N. Gooden Park for this park.

Commissioner Grippa reiterated that his motion was not for a baseball field and that since the location of the retention pond would be at the site of a former brownfield that there could be water quality and contamination issues. He further stated that he wanted staff to look at the demand for the amphitheater and what all of the citizens of Leon County would desire in order to be drawn to this area.

Commissioner Mustian stated he was not aware of the concern by the Science Advisory Committee of putting a holding pond at the site of the former brownfield. He stated that he wanted to direct staff to research the topic to see if this had been done before. He stated that he

would be opposed to this site becoming a level field after the cleanup. **Commissioner Grippa clarified that he was speaking of the designated amphitheatre area being a flat green field that does not have a predetermined use.** Blueprint staff had previously reviewed issues related to creating a lined retention pond in the brownfield. He asked if it was okay to locate it there and if EPA was in agreement. Mr. Davis answered yes on both questions.

Mr. Davis pointed out that what was presented to the Board was a concept only and that no engineering or design has been completed and there is a lot more work to be done. He further stated that Blueprint planned to capitalize on the excavation that was being done to prevent having to repeat the excavation. He further stated that the location was limited because of the topography of the area. Commissioner Rackleff stated that there would be a pond at the coal gasification site however the size would be determined later.

Commissioner Proctor asked if staff had done any drilling to determine how far this site was from karst features and the effects of digging at the site would have on the water quality. Mr. Davis stated that in the area of the contamination, the City has done extensive drilling to determine the extent of the contamination and to verify that they will not be digging into the karst feature. He further stated that once the Board approved moving forward on a concept, the next step would be to do additional drilling in the areas where the ponds and other features are proposed in order to get the answers on whether digging is safe, rather than digging in places where testing is not needed.

Commissioner Thael stated that he would like staff to look into the cost of restoring the cascade. Mr. Davis stated that the cascade was where the stream ended and cascaded into a sinkhole. Mr. Llewellyn stated that from a water quality stand point this would not be practical because the pollutants would go directly into the aquifer.

There being no further discussion, the motion passed 11-1. Commissioner Rackleff cast the dissenting vote.